

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(DISTRICT REGISTRY OF DODOMA)

AT DODOMA

LAND APPEAL NO. 45 OF 2022

*(Originating from the District Land and Housing Tribunal for Iramba at
Kiomboi in Misc. Land Application No. 03 of 2021)*

JOSEPH LUTHER MUNA.....APPLICANT

VERSUS

MWAHIJA RAMADHANI SAKI.....RESPONDENT

JUDGEMENT

Date of Last Order: 06/10/2022

Date of Judgment: 08/11/2022

Mambi, J.

This judgment emanates from the appeal filed by the appellant **Joseph Luther Muna**. Earlier on, the appellant herein unsuccessfully sued the respondent at the District Land and Housing Tribunal of Iramba at Kiomboi (the DLHT). At the DLHT the appellant claimed *inter alia* for exclusive possession and an eviction order to the respondent from the house with which she was living with their children. Having lost his case

at the DLHT he is now before the corridors of this Court in search for justice. The appellant is relying on four related grounds of appeal which in essence he faults the decision of the DLHT for failure to properly evaluate the evidence before it hence resulting to unjust decision.

I have considerably gone through the grounds of appeal, the reply thereof and the records. The issues for determination before this Court is whether the appellant adduced sufficient evidence or proved satisfactorily his allegations before the DLHT and whether the DLHT properly assessed the evidence before it.

It is trite law that he who alleges must prove. Looking at the records, there is no dispute that the parties have lived together as lovers for long time about 20 years or so. Their relation bore fruits to wit they have four issues. The said children and their mother lives in the houses in dispute. The heated debate is on who is the owner of the said houses. While the appellant testifying as PW1 and his witness Issa Ramadhani as PW2 stated that the suit land is the property of the appellant since PW2 is the one who sold it to the appellant in 2009 and later developed it, PW1 tendered in evidence among others Exhibit P1 which is a sale agreement. The respondent on the other hand who testified as DW1 and her witness John Benjamin as DW2 stated that she was the one who bought the suit land in 2009 from Issa Ramadhan and developed it. They stated further that, it was DW2 being a hamlet chairman witnessed the transaction which was reduced in writing. DW1 added that the sale agreement and other documents got lost at their home when she travelled in Dodoma. The respondent tendered in evidence among others Exhibit D2 which is a will and Exhibit D3 which are various police loss reports.

Looking at Exhibit P1, a sale agreement despite showing that it was witnessed by the Hamlet Chairman one John Mtie, his secretary one Amos Zanga and two other people no one was called by the appellant to corroborate his story and no reason was advanced as to their whereabouts. Furthermore, the purported sale agreement was not stamped. Each party claimed to have bought the suit land in 2009. DW2 (John Benjamin) stated that he was the then Hamlet Chairman who witnessed the sale of suit land between the respondent and Issa Ramadhan but denounced Exhibit P1 stating that it was a doctored document. Wonderful enough Issa Ramadhan who claimed to have sold the suit land to the appellant denied totally to know the respondent, yet he resides in the same village with the parties who have been cohabiting for more than twenty years. This Court is satisfied as the DLHT had found that the appellant's evidence was contradictory and untrustworthy. From the evidence on record, the DLHT was right and this Court does believe the respondent's story that when the respondent was away in Dodoma nursing her ailing mother in 2020 the sale agreement and her other properties were stolen from their home. This drove the appellant and his group to forge a sale agreement which he adduced at the DLHT as Exhibit P1.

Furthermore, the evidence suggests, and this is my strongest view, that the parties in their happy days apart from getting children they also acquired jointly the suit land. This can be evidenced by their undisputed joint will (Exhibit D2). In the will the appellant and the respondent clearly showed their intention to jointly bequeath the suit land (their houses) which they termed as their joint property to their children. Now if the suit land was jointly owned by the parties in their happy days,

then can it be owned by one person just because things has turned sour? The answer is obvious no.

The appellant is appearing to fault the DLHT reliance on the will in its decision. Basically, the appellant is contending that the contents of a will operate after the death of the testator. This Court is of the considered opinion that this argument is misconceived, since apart from the said will there are other evidences from the respondent, as shown above, proving that the suit land is a joint property. Additionally, since the fact in issue was the ownership of the suit land and it was the same very land, the parties bequeathed to their children. This then made a will though not a fact in issue, very relevant evidence to the fact in issue.

Reference can be made in section 8 of the Evidence Act [Cap 6, R: E 2019] which provides as follows;

'Facts which, though not in issue, are so connected with the fact in issue as to form part of the same transaction, are relevant whether they occur at the same time or place or at different times and places''

In **R vs Kurji (1940) 7 EACA 58**, where the accused had stabbed the brother of the deceased and had uttered threats against the deceased. Immediately afterwards, he was seen in the go down of an immediate shop standing over the deceased holding a dagger. It was held that the two circumstances were so interconnected that the wounding or stabbing of the deceased's brother must be regarded as part of the res-gestae in the trial of the accused in the murder of the deceased. Further, that this evidence was admissible even though it tended to lead to commission of another offence.

To answer the issues, I had raised above this Court finds that the appellant failed to prove his claims over the suit land and the DLHT properly assessed the evidence of the parties and rightly made its decision.

In view of the foregoing discussions, I have no reason to fault the decision made by Iramba District Land and Housing Tribunal rather than upholding it. That, said I find that this appeal lacks merit and is hereby dismissed in its entirety. No orders as to costs.

Order accordingly.

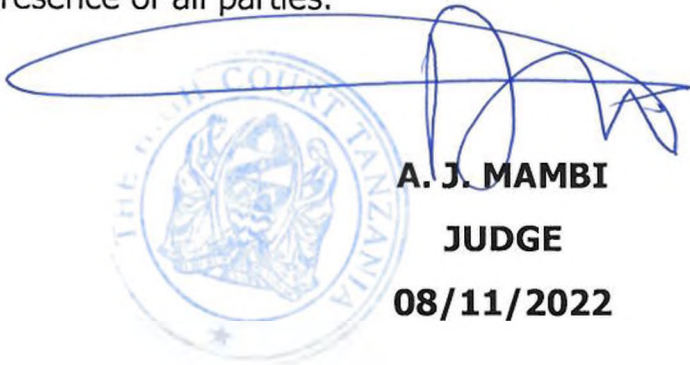


A. J. MAMBI

JUDGE

08/11/2022

Judgment delivered in Chambers this 08th day of November, 2022 in presence of all parties.

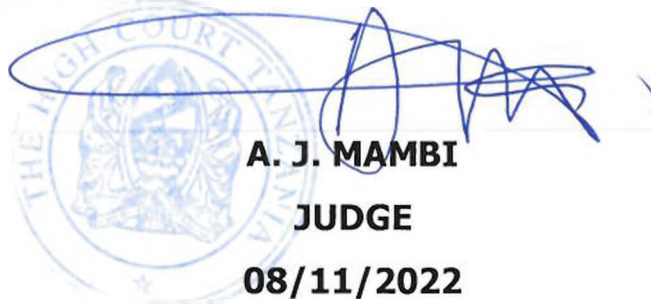


A. J. MAMBI

JUDGE

08/11/2022

Right of appeal explained.



A. J. MAMBI

JUDGE

08/11/2022